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Graphic, LLC d/b/a Silicon Valley Graphics

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GO DADDY OPERATING
COMPANY, LLC,

Plaintiff,

vs.

USMAN GHAZNAVI a/k/a USMAN
ANIS, SALMAN GHAZNAVI a/k/a
SALMAN ANIS, SILICON VALLEY
GRAPHIC, LLC
d/b/a SILICON VALLEY GRAPHICS,
and DOES 1 through 50,

Defendants.

CASE NO. 4:17-cv-06545-PJH

Hon. Phyllis J. Hamilton

DEFENDANTS SALMAN
GHAZNAVI'S NOTICE OF ERRATA

Date: February 14, 2018

Time: 9:00 a.m.

Location: Oakland Courthouse,

Courtroom 3 - 3rd Floor

1301 Clay Street, Oakland, CA 94612

ERRATA

Defendant Salman Ghaznavi submits the following changes to his Reply to Plaintiff Go Daddy Opertaing Company, LLC's Opposition to Motion to Quash Service of Summons and to Dismiss Complaint for Lack of Personal Jurisdiction (FRCP 12(B)(2)) and For Insufficient Service of Process (FRCP12(B)(5). A corrected copy of the brief is attached hereto as Exhibit A.

Page	Line	Change/Add/Delete
DOCUMENT: OPPOSITION		
2	17	Add: "(Doc. N. 32-1, Ghaznavi Decl. ¶ 10; Doc. N. 40-2, Ghaznavi Decl. ¶ 3.)"
4	16	Delete: "Ghaznavi Reply Decl. ¶ 3.)" Add: "Doc. N. 40-2, Ghaznavi Decl. ¶ 3; Prackup Decl. ¶¶ 2-3 Exh. A, B.) "(Exhibit E.)"
6	12-13	Add: "(Doc. N. 32-1, Ghaznavi Decl. ¶ 10; Doc. N. 40-2, Ghaznavi Decl. ¶ 3)"
8	19-20	Add: "(Doc. N. 32-1, Ghaznavi Decl. ¶ 10; Doc. N. 40-2, Ghaznavi Decl. ¶ 3)"
9	8	Add: "under the specific jurisdiction analysis," after "above," and before "jurisdiction"

Dated: January 22, 2018

LAW OFFICE OF BRENDA A. PRACKUP

By: /s/ Brenda A. Prackup

Brenda A. Prackup

Attorney for Defendant Salman Ghaznavi

CERTIFICATE OF SERVICE

I hereby certify that on the below date, a copy of the foregoing document was filed electronically, with the Court's CM/ECF, which will provide notice of the same on the parties.

Dated: January 22, 2018

LAW OFFICE OF BRENDA A. PRACKUP

By: /s/ Brenda A. Prackup

Brenda A. Prackup

Attorney For Defendant Salman

Ghaznavi

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EXHIBIT A

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CASE NO. 4:17-cv-06545-PJH

Hon. Phyllis J. Hamilton

DEFENDANTS SALMAN
GHAZNAVI'S CORRECTED REPLY
TO PLAINTIFF GO DADDY
OPERATING COMPANY, LLC'S
OPPOSITION TO MOTION TO
QUASH SERVICE OF SUMMONS
AND TO DISMISS COMPLAINT
FOR LACK OF PERSONAL
JURISDICTION (FRCP 12(B)(2))
AND FOR INSUFFICIENT SERVICE
OF PROCESS (FRCP 12(B)(5))

Date: February 14, 2018
Time: 9:00 a.m.
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1301 Clay Street, Oakland, CA 94612

1 **I. INTRODUCTION**

2 Plaintiff Go Daddy Operating Company, LLC (“Plaintiff”) has not met its
3
4 burden of making a prima facie showing of personal jurisdiction over Salman
5 Ghaznavi (“Ghaznavi”).

6 Plaintiff’s complaint, memorandum and declarations are rife with hearsay,
7
8 lack foundation and unsupported conclusions and do not come close to meeting its
9 burden of introducing competent evidence to support personal jurisdiction of
10 Ghaznavi.

11 There is only one corporate defendant in this case, Silicon Valley Graphics,
12
13 LLC (“SVG”). Ghaznavi is not an officer or director of SVG. (Doc. No. 32-1,
14 Declaration of Salman Ghaznavi (“Ghaznavi Decl.”) ¶ 5.) Plaintiff has failed to
15 allege that SVG contacted its customers. Furthermore plaintiff has failed to allege
16 that Ghaznavi contacted its customers. (Doc. N. 32-1, Ghaznavi Decl. ¶ 10; Doc.
17 N. 40-2, Ghaznavi Decl. ¶ 3.)
18

19 In addition the service of the summons and complaint must be quashed
20
21 because Ghaznavi is a Pakistani citizen and lives in Pakistan. (Doc. No. 32-1,
22 Ghaznavi Decl. ¶ 2.) Pakistan is a signatory to the Hague Service Convention, and
23 as such, service should be effected through the Hague Service Convention, not by
24 substitute service on SVG. (Opposition, 16:10-16.) Ghaznavi is not an officer or
25 director of SVG. (Doc. No. 32-1, Ghaznavi Decl. ¶ 5.) These reasons render the
26
27
28

1 imposition of personal jurisdiction over Mr. Ghaznavi inconsistent with
 2 constitutional norms of due process.

3
 4 For the foregoing reasons, Ghaznavi's motion to quash service of summons
 5 and dismiss the complaint for lack of personal jurisdiction and insufficient service
 6 of process should be granted.

7 **II. ARGUMENT**

8 **A. THE COURT LACKS GENERAL JURISDICTION OVER MR. GHAZNAVI.**

9
 10
 11 Plaintiff argues that the Court may exercise general personal jurisdiction
 12 over Ghaznavi because he is the president of a number of California corporations,
 13 owns and/or controls companies that do business in California, and retained
 14 counsel in California. (Opposition 6:1-3.)

15
 16 The only named corporate defendant is SVG. Plaintiff's complaint does not
 17 allege that Ghaznavi owns/operates or controls SVG. As stated in paragraph five
 18 (5) of his declaration in support of his motion, Mr. Ghaznavi is neither a member
 19 or officer of SVG. (Doc. No. 32-1.) Plaintiff provides no evidence to support its
 20 argument.
 21

22
 23 Plaintiff cites to case law for the notion that general jurisdiction exists over
 24 Ghaznavi. However the case law cited concerns companies that are named as
 25 defendants over which the court has jurisdiction. The only corporate defendant
 26 named is SVG, and as set for above, Ghaznavi is not a member or officer of SVG.
 27 Furthermore, none of the other companies referenced in plaintiff's complaint are
 28

1 named defendants and as such the Court has no jurisdiction over these other
2 companies.

3
4 Plaintiff attaches numerous exhibits to declarations filed by Plaintiff's
5 counsel in support of its opposition which are objectionable. These declarations
6 and exhibits do nothing to advance plaintiff's claims. They are rife with hearsay,
7 lack foundation and unsupported conclusions and do not come close to meeting its
8 burden of introducing competent evidence to support personal jurisdiction of
9 Ghaznavi. There are simply no allegations in the complaint or any evidence to
10 support that Ghaznavi personally contacted plaintiff's customers.
11

12
13 As set forth in his declarations, there simply are no wide ranging and
14 systematic contacts, by Mr. Ghaznavi with California. (Doc. No. 32-1, Ghaznavi
15 Decl. ¶¶ 2-10; Doc. N. 40-2, Ghaznavi Decl. ¶ 3; Prackup Decl. ¶¶ 2-3 Exh. A, B.)
16

17 In addition, the opposition fails to provide any authority to establish personal
18 jurisdiction because Ghaznavi retained counsel in California.
19

20 As such, Ghaznavi is not subject to general jurisdiction in California.

21 **B. The Court Does Not Have Specific Jurisdiction Over Mr. Ghaznavi**

22 Plaintiff argues that the first two requirements for exercising specific
23 jurisdiction over Ghaznavi are met based on agency and alter ego relationships
24 between Ghaznavi and a network of California businesses. (Opposition, 7:10-15.)
25

26 In order to assert jurisdiction over Ghaznavi under an alter ego theory,
27 plaintiff must establish "that there is such a unity of interest and ownership
28

1 between the corporation and the shareholder that the two no longer exist as
 2 separate entities" and "that failure to disregard the corporation would result in
 3 fraud or injustice." *Seymour v. Hull Moreland Engineering*, 605 F.2d 1105, 1111
 4 (9th Cir.1979).

5
 6 The complaint fails to allege any alter ego relationships. Furthermore, the
 7 only company that plaintiff sued was Silicon Valley Graphics, LLC. As stated in
 8 paragraph five (5) of his declaration, Ghaznavi is not an officer or member of
 9 SVG. (Doc. No.32-1, Ghaznavi Decl. ¶ 5.) In addition, it is unclear, and plaintiff
 10 has failed to provide any authority that would allow the court to disregard the
 11 corporate form of a "network of California businesses" that are not named as
 12 defendants.
 13
 14

15
 16 Plaintiff has not alleged in its complaint or provided evidence or argument in
 17 support of its opposition that disregarding the corporate form would result in a
 18 fraud or injustice to support the second element of the prima facie case for
 19 establishing alter ego liability.
 20

21 The agency theory similarly fails. "Agency is the fiduciary relationship that
 22 arises when one person (a 'principal') manifests assent to another person (an
 23 'agent') that the agent shall act on the principal's behalf and subject to the
 24 principal's control, and the agent manifests assent or otherwise consents so to act."
 25 (*Jones v. Royal Admin. Servs., Inc.*, 866 F.3d 1100, 1105 (9th Cir. 2017) (citing
 26 Restatement (Third) of Agency § 1.01).) "For an agency relationship to exist, an
 27
 28

1 agent must have authority to act on behalf of the principal and "[t]he person
2 represented [must have] a right to control the actions of the agent." Id. (quoting
3 Restatement (Third) of Agency § 1.01 cmt. c).

4
5 Plaintiff has not alleged any agency theory in its complaint or provided any
6 evidence to support an agency theory between Ghaznavi and SVG. Ghaznavi is not
7 an officer or member of SVG. (Doc. No. 32-1, Ghaznavi Decl. ¶ 5.) Furthermore,
8 plaintiff has not alleged or provided any evidence showing that any of the non-
9 defendant companies contacted plaintiff's customers or that Ghaznavi himself
10 contacted any of plaintiff's customers. (Doc. N. 32-1, Ghaznavi Decl. ¶ 10; Doc.
11 N. 40-2, Ghaznavi Decl. ¶ 3,)

12
13 In the hundreds of pages submitted by plaintiff's in support of its opposition,
14 there is no evidence that Ghaznavi contacted plaintiff's customers.

15
16 Finally, plaintiff did not address Ghaznavi's argument that jurisdiction over
17 individual officers of a corporation cannot be predicated merely upon jurisdiction
18 over the corporation." (*Weller v. Cromwell Oil Company*, 504 F. 2d 927 (6th
19 Circuit 1974); see also *Universal Tube & Rollform Equip. Corp. v. YOUTUBE*,
20 504 F. Supp. 2d 260 (Dist. Court, ND Ohio 2007.)

21
22 Plaintiff has not met its burden of demonstrating that Ghaznavi has
23 purposefully availed himself of the benefit of doing business in California, and
24 therefore also has not carried its burden of establishing a prima facie case of
25 specific jurisdiction over Ghaznavi
26
27
28

1 **1. Ghaznavi Has Not Purposefully Directed His Activities to California**

2 With regard to the first prong, the "purposeful availment" standard
3
4 and the "purposeful direction" standard are two distinct concepts.

5 *Washington Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 672 (9th
6 Cir. 2012).

7
8 For claims sounding in tort, courts apply the "purposeful direction"
9 test. (*Schwarzenegger*, 374 F.3d at 802-03.) The plaintiff must show that
10 the defendant committed an intentional act, expressly aimed at the forum
11 state, causing harm that the defendant knows is likely to be suffered in the
12 forum state. (*Calder v. Jones*, 465 U.S. 783, 789-90 (1984).)

13
14 Plaintiff does not assert a claim of direct liability against Ghaznavi.
15
16 As set forth above, plaintiff fails to show agency and alter ego theories
17 against Ghaznavi. For these reasons, plaintiff has failed to show that
18 Ghaznavi purposefully directed his activities in California.
19

20 **2. Plaintiff Has Failed To Establish Any Specific California-Related** 21 **Activities By Ghaznavi**

22 Next, plaintiff asserts that Ghaznavi's acts relate to activities in
23 California. Plaintiff contends that because it would not have been injured
24 "but for" Ghaznavi's acts, the second of the three elements of specific
25 jurisdiction is met. However, the complaint fails to allege the "acts" that
26 Ghaznavi took or provide any evidence in to support its argument, nor do
27
28

1 the declarations and evidence provided by plaintiff's counsel show any
2 actions by Ghaznavi.

3
4 **3. It Would Be Unreasonable For the Court to Exercise Jurisdiction
Over Ghaznavi In California**

5 Ghaznavi lives and works in Pakistan. (Doc. 32-1, Ghaznavi Decl. ¶ 2.) It
6 would be burdensome and an extremely inconvenient for Ghaznavi to litigate this
7 matter in California.
8

9 Ghaznavi has not waived the remaining factors, as plaintiff has not proved
10 the first two prongs for specific jurisdiction, so there is no need to discuss the
11 remaining factors. Nevertheless, assuming, arguendo that the court finds that
12 plaintiff has proved the first two prongs of specific jurisdiction, the remaining
13 factors cannot be met.
14

15 While California has a significant interest in protecting rights and interests
16 of its residents, as set forth above, plaintiff has failed to allege any facts to
17 showing that Ghaznavi contacted plaintiff's customers. (Doc. N. 32-1, Ghaznavi
18 Decl. ¶ 10; Doc. N. 40-2, Ghaznavi Decl. ¶ 3.)
19

20 As to the fifth through seventh factors, Ghaznavi is a resident of Pakistan
21 and it would be burdensome for him to litigate in California. According to the
22 complaint, there are other parties located in Pakistan that are allegedly involved
23 in the activities described by plaintiff in its complaint. Plaintiff is a major
24 corporation and can certainly litigate in Pakistan. In fact, it has a separate domain
25
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1 just for registering websites in Pakistan <https://pk.godaddy.com/> (Prackup Decl. ¶
 2 5.)

3
 4 For the foregoing reasons, the Court should grant Ghaznavi's motion to
 5 dismiss based on lack of personal jurisdiction.

6 **C. The Court Has No Jurisdiction Over Ghaznavi Under Fed. R. Civ.**
 7 **Proc. Rule 4(k)(2)**

8 For the same set forth above, under the specific jurisdiction analysis,
 9 jurisdiction against Ghaznavi fails under Fed. R. Civ. Proc. Rule 4(k)(2).

10 **D. Plaintiff's Request for Leave to Conduct Jurisdictional Discovery**
 11 **Should Not Be Granted.**

12
 13 As set forth above, plaintiff has failed to establish a prima facie jurisdiction
 14 over Ghaznavi. It would be extremely burdensome and inconvenient for Ghaznavi
 15 for jurisdictional discovery to be conducted as he is in Pakistan.

16
 17 **E. Service Of Summons Should Be Quashed For Insufficient Service Of**
 18 **Process Under Fed. R. Civ. Proc. 12(B)(5)**

19 First, Plaintiff fails to address Ghaznavi's argument under FRCP 4, that a
 20 defendant's office or place of business is not his or her "usual place of abode"
 21 within the meaning of FRCP 4. Ghaznavi is a Pakistani citizen and lives in
 22 Pakistan. (Doc. No. 32-1, Ghaznavi Decl. ¶ 2.) Pakistan is a signatory to the Hague
 23 Service Convention, and as such, service should be effected through the Hague
 24 Service Convention, not by substitute service on SVG (Opposition, 16:10-16.) as
 25 plaintiff did because Ghaznavi is not an officer or director of SVG. (Doc. No. 32-1,
 26
 27
 28

1 Ghaznavi Decl. ¶ 5.) These reasons render the imposition of personal jurisdiction
2 over Mr. Ghaznavi inconsistent with constitutional norms of due process.

3
4 For these reasons, there was insufficient service of process and Mr.
5 Ghaznavi's motion to quash services of summons must be granted.

6 **F. CONCLUSION**

7 For the reasons set forth above, the Court should quash the service of
8 summons for lack of personal jurisdiction pursuant to F.R.C.P. 12(b)(2) and
9 because Plaintiff failed to properly serve Mr. Ghaznavi pursuant to FRCP 4(f).
10

11
12 Dated: January 22, 2018

LAW OFFICE OF BRENDA A. PRACKUP

13 By: /s/ Brenda A. Prackup

14 Brenda A. Prackup

15 Attorney for Defendant Salman Ghaznavi
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CERTIFICATE OF SERVICE

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Ghaznavi